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police complaints  
commission

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By email to:

Ron Ball, Police and Crime Commissioner for Warwickshire

16 October 2013

Dear Mr Ball

**Investigation into conduct of Inspector Mackaill, Sergeant Jones and Detective Sergeant Hinton regarding meeting with Andrew Mitchell MP**

I thought I should write in response to your comments yesterday about my statement on the above, to clarify the points you raised.

In relation to the mode of investigation, it is indeed correct that West Mercia Police initially referred this matter to the IPCC, and we determined that the matter should be supervised. That is because we had earlier decided to supervise the much larger Metropolitan Police investigation into police involvement in the original incident. We are simply not resourced at present to carry out independent investigations of that scale. It therefore made sense to deal with both linked matters in the same way.

It is not, however, correct to say that the IPCC was invited only last week to change the status of the investigation. Nor is it correct that the IPCC was asked several times to reconsider the mode of investigation. Such a matter would not in any event require an invitation; the IPCC can change the status of an investigation at any time while it is ongoing. In this case however the investigation was concluded and a final report had been written and submitted. We had no concerns about the quality of the investigation carried out by West Mercia Police. It was the conclusion we disagreed with. In that regard, I note that in the first draft report submitted to the IPCC in July the senior investigating officer did in fact conclude there was a case to answer for misconduct, although the final report, submitted in August, did not.

While it is clear that we can re-determine an investigation and re-do it independently if we believe that the original investigation was itself flawed, this is not the case here. The lawfulness of an IPCC decision to re-determine a completed investigation after the final report was submitted, and then re-open the investigation, simply to rewrite its conclusions, would have been highly questionable.

In relation to the IPCC disagreement with the findings, I wrote to Mr Chesterman on 6 September, after a detailed review of the evidence, to set out my views on the conclusions, in order to give the appropriate authorities an opportunity to reconsider the matter as they were free to depart from the findings set out in the report. I received a response on 3 October, on behalf of the appropriate authorities of West Mercia, West Midlands and Warwickshire Police, that it was the view of all three authorities that there was no case to answer.

On the basis that Mr Mitchell was not a complainant, I then sought to clarify the position of the appropriate authorities in relation to providing him with a copy of the report and a right of appeal. Mr Chesterman advised me on 7 October that:

*The IPCC decided that the matter should be dealt with as a Supervised matter. As a result of this and the fact that Mr Mitchell is not a complainant, the law does not afford him a right of Appeal.*

*If Mr Mitchell wants to be afforded the status of a complainant, we would record a complaint from him. In addition, I understand that, at any time during a Conduct investigation, the IPCC has the power to change the status of the investigation and consequently its powers to direct.*

*At this time Mr Mitchell's status is that of an Interested Party and as such the Regulations afford him the right to receive updates on the investigation and its findings. Unfortunately therefore I can not, at this stage, agree to disclosure of the Conduct investigation report to him as he is not entitled to it. Subject to his wishes, if he does decide to become a complainant, we would at that stage review disclosure and his access to material.*

As agreed, I then ascertained from Mr Mitchell whether he wished to make a formal complaint. His view was that although he has not made a formal complaint he has made his allegations about the officers, and his views about their conduct, entirely clear, and he saw no point in making a formal complaint at this stage.

I advised Mr Chesterman of this on 8 October. I also said that as the investigation into this high profile matter was concluded, with no right of appeal, and as the IPCC as the supervising body did not believe that the evidence supported the conclusion of no case to answer, it was right that we should make a public statement about the disagreement and the reasons for it. I also encouraged Mr Chesterman to provide Mr Mitchell with a copy of the investigation report and I understand that he has since done this.

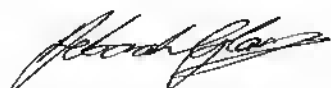
Finally, while the circumstances of this case may have been unusual, it is not at all unusual for the IPCC to disagree with the findings of a supervised investigation. This is in fact explicitly provided for in the Police Reform Act, when a complainant can

appeal to the IPCC against the outcome of a supervised investigation. We consider these appeals, and uphold them, on a regular basis.

If you would find it helpful if I explained our role further in a meeting, I would be happy to do so.

I am copying this letter to the individuals listed below for their information.

Yours sincerely



Deborah Glass  
Deputy Chair  
**Independent Police Complaints Commission (IPCC)**

cc:

Bill Longmore, Police and Crime Commissioner for West Mercia  
Bob Jones, Police and Crime Commissioner for West Midlands  
Chief Constable David Shaw, West Mercia  
Chief Constable Chris Sims, West Midlands  
Chief Constable Andy Parker, Warwickshire  
Rt Hon Theresa May MP, Home Secretary  
Rt Hon Keith Vaz MP, Chair Home Affairs Committee  
Rt Hon Andrew Mitchell MP